IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22/04/2004

Coram

The Hon'ble Mr. Justice S.SARDAR ZACKRIA HUSSAIN

CRP. (N.P.D) No.1612 of 2002

R. Nageswaran ... Petitioner

-Vs-

1. S. Jayaraj

2. Assistant Election Officer
Extension Officer (Small Savings)
Pallipalayam Panchayat Union
Tiruchengode Taluk
Namakkal District

3. The Returning Officer
(The Commissioner)
Pallipalayam Panchayat Union
Pallipalayam
Tiruchengode Taluk
Namakkal District

4. District Election Authority
(District Collector)
Namakkal Collectorate
Namakkal Town
Namakkal District

5. The State Election Commissioner
State Election Commission
6 Revathi Street
Vadapalani Street
Chennai 36 ... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decretal order dated 08.10.2002 and made in E.O.P. No. 62 of 2002 on the file of the Election Court (District Judge), Namakkal.

!For Petitioner : Mr.R.Kamesh

^For Respondent 3 : Mr.M.C. Swamy

For Respondents : No appearance
1,2,4 & 5

:ORDER

The petitioner in E.O.P. No. 62 of 2002 on the file of the Election Court (District Judge), Namakkal, is the revision petitioner. The Civil Revision Petition is directed against the order of dismissal of the petition in respect of the prayer sought for by the petitioner to declare him as the Vice President of Kalianoor Agraharam Village Panchayat in the election held on 31.10.2001 though the election of the first respondent as successful candidate for the said post was set aside in E.O.P. No. 62 of 2002 as per the order dated 08.10.2002.

2. The petitioner filed a petition in E.O.P. No. 62 of 2002 under Rule 122 read with Rule 75 of the Tamil Nadu Panchayats (Election) Rules, 1995 to set aside the election of the first respondent as the winner for the post of Vice President of Kalianoor Agraharam Village Panchayat in the election held on 31.10.2001 and consequently, to declare the petitioner as the Vice President of Kalianoor Agraharam Village Panchayat.

3. The petitioner filed the Election O.P. on various grounds and one among such grounds is, despite the fact that he has submitted written objections with regard to the mode, conduct and manner of the second respondent, viz., the Assistant Election Officer (Extension Officer of Pallipalayam Panchayat Union), in receiving the nomination of the first respondent in violation of all the Rules and Democratic norms, the first respondent was declared elected by a margin of one vote. The electorate consists of 6 ward members and the President of Village Panchayat, totalling in all 7 votes. It is further stated in the petition that the petitioner was duly proposed and seconded by Ward members. The first respondent, who was the only rival candidate, was proposed and seconded by non-members of Kalianoor Agraharam Village Panchayat contrary to the Tamil Nadu Panchayats (Election) Rules, 1995.

4. The first respondent opposed the petition by filing counter. According to him, nowhere it is stated in the Election Manual that the candidate for the post of Vice President should be proposed and seconded by members alone. On this ground, he sought for dismissal of the petition.

5. The third respondent filed counter, which was adopted by respondents 2, 4 and 5, stating that the Assistant Returning officer had received the nominations from the petitioner and the first respondent for the election for the post of Vice President of Kalianoor Agraharan Village Panchayat, that she had failed to notice that the nomination form 27-A of the first respondent was duly proposed and seconded by the ward members, that though she failed to scrutinise the nomination in a proper manner, the election process had been finalised according to the electoral procedures and that it is not proper to declare the petitioner as Vice President. On these

grounds, he sought for dismissal of the petition.

6. A letter dated 31.10.2001 by the petitioner addressed to the the Election Officer and a letter of the same date by the petitioner addressed to the Commissioner and Returning Officer have been marked as Exs. A.1 and A.2 respectively and no oral evidence was adduced on either side. Considering the materials available on record and also taking into consideration the counter filed by the third respondent, Returning Officer, the learned District Judge (Election Court), Namakkal, held that the nomination form 27-A of the first respondent was not duly proposed and was not seconded by the Ward member. Since the nomination of the first respondent itself being invalid, the election declaring the first respondent for the post of Vice President of Kalianoor Agraharam Panchayat is ab-inito void as per Rule 134 of the Tamil Nadu Panchayats (Election) Rules, 1995 and in that view, the learned Judge allowed the petition partly setting aside the election of the first respondent for the post of Vice President of Kalianoor Agraharam Panchayat and dismissed the petition with respect to the other relief sought for by the petitioner, viz., to declare him as Vice President in the said election. The said order is under challenge in the Civil Revision Petition.

7. The learned counsel appearing for the revision petitioner contended that the nomination papers submitted by the first respondent for the post of Vice President of Kalianoor Agraharam Village Panchayat have not been properly made and in that respect, the learned Judge set aside the election of the first respondent as Vice President of the Kalionoor Agraharam Village Panchayat. He further submitted that the relief in not granting and declaring the petitioner as Vice President in the said Panchayat election is not proper as the petitioner was the only rival candidate for the said post.

8. The learned counsel appearing for the third respondent / Returning Officer argued that as per Rule 134 of the Tamil Nadu Panchayats (Election) Rules 1995, the discretion has not been exercised by the Election Court, viz., District Court, Namakkal, in declaring the petitioner as successful candidate for the Post of Vice President of Kalianoor Agraharam Village Panchayat and the same cannot be challenged in this revision. The learned counsel also brought to the notice of this Court that pursuant to the direction by this Court in C.M.P. No. 16952 of 2002 dated 10.01.2003, fresh election had been notified by the Tamil Nadu State Election Commission and election was held and only one candidate, viz., the first respondent has filed nomination papers and no other nomination was made. He also submitted that the announcement of the election was withheld as per the order of this Court.

9. It is submitted that in respect of the nomination of the first respondent for the post of Vice President of Kalianoor Agraharam Village Panchayat, the proposal and seconding was done by non-members. It is also not in dispute that the proposal and seconding of the first respondent were done by non-members and as such, it is submitted that such acceptance of the defective nomination filed by the first respondent was immediately brought to

the notice of the Election Officer and Commissioner and Returning officer as seen in Exs. A.1 and A.2. As such it is clear as found by the Election Court that the nomination of the first respondent itself is invalid. As per Rule 134 (c) of the Panchayats (Election) Rules, 1995, at the conclusion of the trial of an election petition, the election court shall make an order declaring the election of all or any of the returned candidates to be void and the petitioner or any other candidate to have been duly elected. Though the Election Court found that the nomination papers of the first respondent were not validly presented and as such, set aside the election of the first respondent for the Post of Vice President of Kalianoor Agraharam Village Panchayat, the Election Court should have declared the petitioner as successful candidate for the said post as his nomination was the other one besides the nomination of the first respondent. It is not the case that the nomination papers of the petitioner were not proper or invalid. It is also not in dispute that the nomination papers in respect of the petitioner were duly proposed and seconded by the Panchayat members. Though the Election Court found that the nomination papers of the first respondent are invalid, it failed to declare the only other candidate, viz., the petitioner, as duly elected for the post of Vice President of Kalianoor Agraharam Village Panchayat. Therefore, the order of the Election Court in not declaring the petitioner as duly elected for the post of Vice President of Kalianoor Agraharam Village Panchayat has to be set aside.

10. In the result, the Civil Revision Petition is allowed. The order of the Election Court, viz., District Court, Namakkal, relating to the dismissal of the petition is set aside and the revision petitioner is declared elected for the post of Vice President of Kalianoor Agraharam Village Panchayat in the election held on 31.10.2001. No costs. Consequently, C.M.P. No. 16952 of 2002 is closed.

Index : Yes.
Internet: Yes

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To

1) The District Judge
Namakkal

2) The Section Officer,
V.R. Section,
High Court,
Madras.